

**JUL 21 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE GUADALUPE VEGA, aka Jose Luis  
Murrieta, aka Luis Armantes, aka Jose  
Dosamantes,

Defendant - Appellant.

No. 02-50144

D.C. No. CR-01-00399-WJR-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
William J. Rea, District Judge, Presiding

Argued and Submitted July 15, 2003  
Pasadena, California

Before: KLEINFELD, WARDLAW, Circuit Judges, and Pogue\*\*, CIT Judge.

Both of the supplemental jury instructions given by the district court during

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Donald Pogue, US Court of International Trade, sitting by designation.

the jury's deliberations following Vega's trial constituted de facto Allen charges in the circumstances, under Jiminez v. Myers,<sup>1</sup> so we reverse under United States v. Seawell.<sup>2</sup> We do not intimate that the instruction would be deemed an Allen charge in other circumstances where not given in response to a jury communication that the jury was at an impasse.

REVERSED.

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<sup>1</sup> 40 F.3d 976, 980 (9th Cir. 1993).

<sup>2</sup> 550 F.2d 1159, 1163 (9th Cir. 1977).